



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Joe Kunschik, Commissioner  
Bureau of Labor Statistics  
Austin, Texas

Dear Sir:

Opinion No. 6-1269  
Re: Under the facts set forth,  
does John Doe come within  
the provisions of the Em-  
ployment Agency Law?

We are in receipt of your letter of August 11,  
1939, in which you request an opinion of this Department  
in respect to the following situation:

"Your opinion is respectfully requested on  
the following state of facts with reference to  
the Employment Agency Law, Articles 5208-5221,  
Revised Civil Statutes, and Articles 1584-1593,  
Penal Code:

"John Doe maintains an office and carries  
on the business of providing programs of enter-  
tainment to persons, associations, conventions,  
etc. Such entertainment is produced by singers,  
musicians, dancers, comedians, and various other  
performers under the direction of John Doe. The  
person, association, convention, etc. outlines  
to John Doe the general type of program desired,  
or agrees to accept the type of programs recom-  
mended by John Doe. The person, association,  
convention, etc. does not interview or pay any  
money to any of the performers, but deals direct-  
ly and only with John Doe. The price of the pro-  
gram is a lump sum which is fixed by mutual agree-  
ment between John Doe and the person, association,  
convention, etc. desiring the entertainment. John  
Doe selects performers to produce the type of  
program contracted for, and pays the performers  
the price agreed upon between John Doe and the  
performers. John Doe has exclusive charge and

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control of the performers, is present, and directs the program throughout its rendition.

"Under the above mentioned facts, does John Doe come within the provisions of the Employment Agency Law, whereby he would be required to obtain an employment agency license to carry on such activities?"

At the outset we wish to point out that the Texas Employment Agency Law, Articles 5208 through 5221, Revised Civil Statutes of 1925, as amended, and Articles 1584 through 1593 of Vernon's Annotated Penal Code, are very fully and capably discussed in the case of Karr v. Baldwin, 57 Fed. (2nd) 252 (District Court, Texas) by Judge Atwell.

Article 5208, Revised Civil Statutes, 1925, defines an "Employment Agency" as follows:

"The term 'Employment Agency' means every person, firm, partnership or association of persons engaged in the business of assisting employers to secure employees, and persons to secure employment, or of collecting information regarding employers seeking employees, and persons seeking employment."

The same statute contains the following definition of "Employment Office":

"The term 'Employment Office' means every place or office where the business of giving intelligence or information where employment or help may be obtained, or where the business of an employment agent is carried on."

According to the statutory definition above set out an "Employment Agent" is a person, firm, partnership or association of persons engaged in the business of bringing about an employer-employee or master-servant relationship between two persons or a firm, corporation, partnership, etc, as employer or master and a person as employee or servant. In a situation described in your letter, however, the agent employs and pays the entertainers. The latter have no contractual relationship whatsoever with the persons, associations, clubs, conventions, etc, desiring the entertainment. They look to the agent for

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their instructions and their remuneration. The agent in turn contracts with the aforesaid parties desiring an entertainment program. A lump sum is paid to the agent for the show or talent he produces or furnishes.

To be an "employee", the relation of master-servant must exist to the extent that one party has the right of ultimate control over the other. *Surety Union Insurance Co. v. McLeod*, (Texas) 36 S. W. (2d) 449, 551.

"In the language of the law, however, the word 'servant' is used to embrace all classes of employees. It is synonymous with 'employee', and includes all persons of whatever rank or position who are subject to the direction and control of another in any department of labor or business." 29 Tex. Juris. 10.

In the Supreme Court case of *Ribnik v. McBride*, 277 U. S. 350, Justice Sutherland makes this significant observation:

"The business of securing employment for those seeking work is essentially that of a broker, that is, of an intermediary."

Under the facts set out in your letter the agent is something more than an intermediary. He is in reality the employer of the entertainers, having complete control and paying them for their services. In the absence of any relationship of master and servant being brought about by said agent between the entertainers on the one hand and the persons, clubs, associations and conventions desiring their services, it is our opinion that the agent or entertainment entrepreneur described in your letter does not come within the purview of Article 5208, Revised Civil Statutes of 1925, and is not required by law to obtain an Employment Agency license, Articles 5208 through 5221, Revised Civil Statutes of 1925, as amended, and Articles 1584 through 1593 of the Annotated Penal Code of Texas not applying to his business.

Trusting that the above fully answers your inquiry,  
we are

Yours very truly

APPROVED AUG 22, 1939

ATTORNEY GENERAL OF TEXAS

*Gerald B. Mann*  
ATTORNEY GENERAL OF TEXAS

By

*Dick Stout*  
Dick Stout  
Assistant

DS:LM  
MCH

